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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,972	02/19/2002	Patrick R. Connelly	BTI-6	3133
37211	7590	09/28/2004	EXAMINER	
BASCH & NICKERSON LLP 1777 PENFIELD ROAD PENFIELD, NY 14526			GETZOW, SCOTT M	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,972

Applicant(s)

CONNELLY ET AL.

Examiner

Scott M. Getzow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 and 30-57 is/are rejected.
- 7) ☒ Claim(s) 29 and 58 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,2,3,4,8,12,16,20,30-33,37,41,45,49 are rejected under 35 U.S.C. 102(e) as being anticipated by Roberts et al (6134459).

Figure 2a shows the primary device housing 32. Figure 7 shows light emitters 92,94 and a light detector 195. Figure 8 shows electrodes 5, 7 that can sense and stimulate tissue. Column 12, lines 1-6 teach that pressure sensors can be used as the sensor assembly 17.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5,9,13,17,21-27,34,38,42,46,50-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al in view of Fitch et al (6575965).

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Fitch teaches a mirror 173 that can be used to reflect laser light from a proximal end of a lead in order to determine various characteristics of the tissue, such as pressure, see figure 18. It would have been obvious to use such a mirror with the device of Roberts since such has been shown to be effective in sensing pressure of internal tissue regions. Further, the use of laser light is also obvious to use, as shown by Fitch, since it is commonly used in fiber-optic devices for its reliability and efficiency.

5. Claims 6,10,14,18,35,39,43,47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al in view of Takaki (6283632).

Takaki teaches measuring temperature changes by measuring the change in the refractive index of cladding; see col. 1, lines 65+. It would have been obvious to use such a measuring means with the device of Roberts since such has been proven effective in use with fiber-optic systems.

6. Claims 7,11,15,19,36,40,44,48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al in view of Weiss (5132529).

Weiss teaches the use of an optical strain gauge. It would have been obvious to use such with the device of Roberts since such has been shown to be very accurate in measuring various characteristics.

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56 7. Claims 28,5⁷~~0~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al in view of Hedberg et al (6078835).

Hedberg teaches the use of hydrostatic pressure sensing components. It would have been obvious to use such with the device of Roberts since such has been shown to be effective in sensing pressure from within the human body.

Allowable Subject Matter


8. Claims 29,58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (703) 308-2997. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott M. Getzow
Primary Examiner
Art Unit 3762

smg